



UNITED STATES PATENT AND TRADEMARK OFFICE

che

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,261	01/10/2002	Stanley George Bonney	PG3694 USW	5050
23347	7590	04/23/2004	EXAMINER	
DAVID J LEVY, CORPORATE INTELLECTUAL PROPERTY GLAXOSMITHKLINE FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	14

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,261

Applicant(s)

BONNEY ET AL.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02/03/2004 (AMENDMENT).
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32,34-79 and 83-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32,34-79 and 83-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5,7,8,11-13,15,18-20,29,31,32,35-79,84,87 are rejected under 35 U.S.C. 102(b) as being anticipated by Ekenstam et al. ('958).

As to claim 1, Ekenstam et al. disclose a carrier comprising a sheet (9') having a first portion and a second portion; a retainer (see pocket at col.2, lines 30,31), said retainer comprising a pocket or a hole therein; a fold (15) in said second portion such that the second portion is foldable towards the retainer to form a cover therefor; and a join[t] (see marginal edges at col.2, lines 28-31) between said cover and the retainer.

As to claims 2 and 3, Ekenstam et al. disclose said sheet (9') to be an elongated strip with adhesive applied around the [pocket or] hole.

As to claims 4 and 5, Ekenstam et al. (see figure) disclose a plurality of retainers (see indentations in strip 9') in the first portion, wherein the second portion is foldable (15 and col.2, lines 26-28) towards said plurality of retainers to form a cover therefor; and a join[t] (see marginal edges at col.2, lines 28-31) between said cover and the plurality of retainers, the first portion also being foldable via fold (15) towards the retainer to form a base therefor.

As to claims 7 and 8, Ekenstam et al. disclose a second fold (see fold in strip 9' within slot 6 as it is fed beneath guide member 4) in the second portion to form a pull

Art Unit: 3743

release tab that is shaped for ease of grip. That is, the free end of strip 9' as illustrated in the figure has a shape which is fully capable of providing the recited function of being easy to grip by a user.

As to claims 11-13,15 Ekenstam et al. (see figure) disclose a flexible carrier in multi-unit form comprising a series arrangement of a plurality of carriers connected together and formable from the shape sheet or elongate strip (9').

As to claims 18 and 19, Ekenstam et al. disclose the join[t] is formable by adhesive (col.2, lines 28-31), the joint being peelable to enable peelable access to the retainer.

As to claim 20, the retainer of Ekenstam et al. is shaped for receipt by a holder (1).

As to claims 29 and 31, Ekenstam et al. (see figure) disclose a method of making a carrier comprising forming a retainer, comprising a pocket of hole therein, in a first portion of a sheet or elongate strip (9'); filling said retainer with product (13); folding (15) a second portion of said sheet or elongate strip towards the retainer to form a cover therefor; and forming a join[t] (see marginal edges at col.2, lines 28-31) between said cover and the retainer, the carrier of Ekenstam et al. being made in multi-unit form including successive iterations to form a series arrangement of a plurality of containers.

As to claim 32, Ekenstam et al. (see figure) illustrates a pull release tab in order to enable access to the retainer.

As to claims 35-79 and 87, Ekenstam et al. disclose a carrier having structural elements (i.e. folded and adhered strips having pockets therebetween) which is fully capable of providing the recited functions (i.e. intended uses). That is, each of claims 35-79 merely recites an intended use for the carrier defined by claim 1. Since claims 35-

79 and 87 do not recite nor do they add any structural elements to the carrier as established by claim 1, the prior art to Ekenstam et al. having disclosed the structural elements recited in claim 1 is fully capable of providing the recited functions or intended uses.

As to claim 84, Ekenstam et al. disclose a fold (see figure) in said first portion such that the first portion is foldable towards the retainer to form a base therefor; and a join[t] between said base and the retainer. That is, the "expanded bulging" portions within sheet (9') of Ekenstam et al. are readable upon retainers (either one of a pair is readable as a base) and the formation of the closed pocket is accomplished by folding one portion of sheet (9') towards the other and sealing them together as disclosed at col.2, lines 29-31).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6,9,16,17,21,22,24-28,85,86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenstam et al. ('958) in view of Kallstrand et al. ('505).

The difference between Ekenstam et al. and claim 6 is an inert support.

Kallstrand et al., in a carrier, teaches an inert support (col.2, lines 8-12) in the form of plastic which is laminated onto aluminum foil for bearing product (23) thereon.

Art Unit: 3743

While Ekenstam et al. do not expressly disclose the material which is employed to make the strip, it would have been obvious to make the elongated strip of Ekenstam et al. from an inert material including plastic laminated onto aluminum foil because it would have prevented contamination and spoiling of the article being carried as taught by Kallstrand et al..

As to claim 9, Kallstrand et al. teach a second fold (#6 of fig.1) in the second portion to form a pull release tab which is shaped for ease of grip by having a looped end.

As to claims 16 and 17, Kallstrand et al. teach the sheet or elongate strip comprising a laminate of metal foil and organic polymeric material (col.2, lines 8-12).

As to claims 21 and 22, Kallstrand et al. teach dry powder medicament (23) being retained within the carrier.

As to claims 24 and 25, Kallstrand et al. teach an inhalation device comprising a housing (1,2) in combination with a carrier having a holder for receipt of the retainer (3) of the carrier.

As to claim 26, Kallstrand et al. teach the carrier having a pull release tab (6) protruding from the housing (1,2).

As to claims 27 and 28, Kallstrand et al. teach the inhalation device comprising a release mechanism (25) and the pull release tab connects to the release mechanism, the release mechanism being separable from the housing.

As to claims 85 and 86, the medicament in Kallstrand et al. is employed for the treatment of respiratory disorders, the particular medicament being dependent upon the particular respiratory disorder being treated (col.4, lines 30-36).

5. Claims 23,34,83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenstam et al. in view of Kallstrand et al. as applied to claims 6,9,16,17,21,22,24-28 above, and further in view of Jahnsson ('507).

The difference between Ekenstam et al. as modified by Kallstrand et al. and claim 23 is the medicament selected from the group consisting of albuterol, salmeterol, ipratropium bromide, fluticasone propionate and beclomethasone dipropionate and salts or solvates thereof and any mixtures thereof.

Jahnsson (col.4, lines 17-50), in a carrier for medicament teaches carrying and administration of a variety of medicaments including beclomethasone, fluticasone, salmeterol for the purpose of treating a variety of diseases by inhalation of powdered medicaments.

It would have been obvious to further modify Ekenstam et al. as modified by Kallstrand et al. to employ any one of a variety of powdered medicaments including beclomethasone, fluticasone, salmeterol because it would have enabled a single device to treat a variety of diseases by inhalation of powdered medicaments as taught by Jahnsson.

Claim 34 is substantially equivalent in scope to claim 23 and is included in Ekenstam et al. as further modified by Jahnsson for the reasons set forth above with respect to claim 23.

As to claim 83, Jahnsson teaches and establishes a variety of powdered medicaments for the treatment of a variety of diseases. It would have been obvious to further modify the particular medicament in Jahnsson to include albuterol sulfate as an

obvious matter of design choice because it would have enabled the carrier/inhaler of Jahnsson to treat additional disease states which can be addressed with albuterol.

6. Claims 10,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenstam et al. ('958) in view of Levine et al. ('719).

The difference between Ekenstam et al. and claim 10 is at least one perforation in the pull release tab.

Levine et al., in a carrier, teach at least one perforation (2) for the purpose of providing a means for easy detachment and disposal of excess carrier strip material.

It would have been obvious to modify the carrier strip of Ekenstam et al. to include at least one perforation because it would have provided a means for easy detachment and disposal of excess carrier strip material as taught by Levine et al..

As to claim 14, Levine et al. teach points of weakness (2) between each carrier in a series arrangement.

Claim Objections

7. Claim 84 is objected to because of the following informalities: In line 3, "...join..." should read --joint--; it appears to be an inadvertent typographical error. Appropriate correction is required.

Response to Arguments

8. Applicant's arguments filed 02/03/04 have been fully considered but they are not persuasive. Applicant's arguments that Ekenstam et al. lack a pocket or hole in the first portion are disagreed with because Ekenstam et al. expressly disclose individual

pockets being formed by first and second portions being folded and fastened together (col.2, lines 25-31).

Additionally, the drawing figure in Ekenstam et al. illustrates "expanded bulging" portions within each of the first and second portions of sheet (9'). These "expanded bulging" portions within each of the first and second portions of sheet (9') are also readable as pockets. There is no recited claim language defining the pockets which structurally distinguishes the claimed pocket from these "expanded bulging portions" within each of the first and second portions of sheet (9') of Ekenstam et al..

Applicant's arguments regarding claim 29 are disagreed with for the reasons above and because the placement of article (13) on at least one portion of sheet (9') prior to folding of the other portion of sheet (9') towards the one portion is inherent in the making of the carrier of Ekenstam et al..

Applicant's arguments regarding claims 4 and 5 are disagreed with for the reasons above and because each of the "expanded bulging" portions within sheet (9') of Ekenstam et al. are readable upon retainers (either one of a pair is readable as a base) and the formation of the closed pocket is accomplished by folding one portion of sheet (9') towards the other and sealing them together as disclosed at col.2, lines 29-31).

Applicant's arguments regarding claims 35-79 are disagreed with because Ekenstam et al. disclose a carrier having structural elements (i.e. folded and adhered strips having pockets therebetween) which is fully capable of providing the recited functions (i.e. intended uses). That is, each of claims 35-79 merely recites an intended use for the carrier defined by claim 1. Since claims 35-79 do not recite nor do they add any

structural elements to the carrier as established by claim 1, the prior art to Ekenstam et al. having disclosed the structural elements recited in claim 1 is fully capable of providing the recited functions or intended uses.

Applicant's arguments regarding claim 6 are disagreed with because Kallstrand et al. ('505) disclose a separate element (plastic) that takes the form of an inert support onto which product (23) is placed.

Applicant's arguments regarding claim 25 are disagreed with because the rim of recess (3) is readable upon a retainer of carrier.

As to applicant's arguments regarding claims 27 and 28, Kallstrand et al. disclose a tape (6) which is attached to the lower part of the housing by a weak weld (col.2, lines 29-31). The weak weld is readable as a "release mechanism".

As to applicant's arguments regarding claims 23 and 83, it is submitted that the propriety of the combination is deemed to be proper and a prima facie case of obviousness has been established by the combination of prior art as applied for the reasons set forth above in the body of the rejection.

As to applicant's arguments regarding claim 10, the propriety of the combination of prior art is deemed to be proper for the reasons set forth above in the body of the rejection (i.e. for the purpose of providing easy means of detachment and disposal of excess carrier strip material).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/031,261

Art Unit: 3743

Page 11

A handwritten signature in black ink, appearing to read "Aaron J. Lewis".

AARON J. LEWIS

Primary Examiner

Art Unit 3743

Aaron J. Lewis
April 16, 2004